

EXHIBIT

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ARKANSAS RIVER BASIN COMPACT ARKANSAS-OKLAHOMA, 1972

Approved

by the

ARKANSAS RIVER COMPACT COMMITTEE

March 16, 1970

Revised March 3, 1972

ARKANSAS RIVER BASIN COMPACT

ARKANSAS-OKLAHOMA, 1972

Approved

by the

ARKANSAS RIVER COMPACT COMMITTEE

FOR ARKANSAS:

S. Keith Jackson
Committee Member
John Luce
Committee Member
(alternate)

FOR OKLAHOMA:

Glade R. Kirkpatrick
Committee Member
Milton Craig
Committee Member
(alternate)

FOR UNITED STATES OF AMERICA:

Trigg Twichell
Federal Representative and Chairman of Committee

Attest:

Willard B. Mills
Secretary

March 16, 1970
Revised March 3, 1972

Office of Representative, United States 300 E. 8th St., Austin, Tex. 78701

PREFACE

In 1955, the Congress of the United States by Public Law 97, 84th Congress, 1st Session, granted consent to the States of Arkansas and Oklahoma to negotiate and enter into a Compact for the apportionment of the waters of the Arkansas River and its tributaries between the two States. With this authorization and the appointment of a Federal Representative to act as Chairman, the States created the Arkansas-Oklahoma Arkansas River Compact Committee on March 14, 1956, for the purpose of drafting a proposed Compact for the apportionment of the waters of the Arkansas River and its tributaries as they affect those States.

From the beginning the Committee was deliberate in its operations. Two important subcommittees: engineering and legal, were appointed early for the purpose of assembling, analyzing, and interpreting essential engineering and legal data needed by the Compact Committee.

The engineering subcommittee made hydrologic studies which were utilized in determining that portion of the Arkansas River Basin that should be covered by the interstate Compact, analyzed the quantity, quality, and mode of occurrence of the water resources of the area in question and made long-range estimates of the quantities of water that would be needed by the States in future years, recognizing existing water rights and water uses.

The legal committee researched existing interstate water compacts and continuously advised the Compact Committee on legal matters that related to Compact negotiations.

The work of these subcommittees and their reports were invaluable to the Compact committee in reaching its unanimous agreement of the proposed Compact.

The Federal Representative employed a consulting engineer in the field of interstate compacts, and received legal counsel from the U.S. Department of Justice on matters that were of concern to the Federal agencies.

The Arkansas River Compact Committee approved its first formal interstate Compact draft March 16, 1970.

The State of Arkansas ratified this Compact draft through its Act. No. 16, 1971, as passed by the Arkansas General Assembly and signed by Governor Dale Bumpers, January 26, 1971.

The State of Oklahoma ratified the interstate Compact draft through H. B. No. 1326, as passed by the Oklahoma Legislature and signed by Governor David Hall, April 24, 1971. This ratification, however, carried the following amendment:

"SECTION 2. This ratification is subject to the State of Oklahoma and the State of Arkansas, acting through their duly authorized compact representatives, amending said 'Arkansas River Basin Compact' in the particulars as set forth hereinafter, and further, that ratification of said amendment of said compact by the Legislature of the State of Arkansas. Said amendment being expressed as follows:

"The following language shall be added to Article VI, Section A of said compact, to-wit: 'Provided however that nothing contained in this compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own state.'"

The Arkansas River Compact Committee unanimously approved the Oklahoma amendment as an appropriate clarification statement in the Compact. The Federal member of the Committee was formally advised that the Federal agencies had no objections to this amendment.

The State of Arkansas adopted the State of Oklahoma's amendment to the Arkansas River Compact draft through Act. No. 40 as passed by the Arkansas General Assembly and signed by Governor Dale Bumpers, February 17, 1972.

The Arkansas River Basin Compact, Arkansas-Oklahoma, 1972, as revised March 3, 1972, contains the amendment as approved by both States and corrections of typographical errors found in the March 16, 1970 draft.

ARKANSAS RIVER BASIN COMPACT
ARKANSAS-OKLAHOMA, 1972

The State of Arkansas and the State of Oklahoma, acting through their duly authorized Compact representatives, S. Keith Jackson of Arkansas, and Glade R. Kirkpatrick of Oklahoma, after negotiations participated in by Trigg Twichell, appointed by the President as the representative of the United States of America, pursuant to and in accordance with the consent to such negotiations granted by an Act of Congress of the United States of America (Public Law 97, 84th Congress, 1st session), approved June 28, 1955, have agreed as follows respecting the waters of the Arkansas River and its tributaries:

ARTICLE I

The major purposes of this Compact are:

- A. To promote interstate comity between the States of Arkansas and Oklahoma;
- B. To provide for an equitable apportionment of the waters of the Arkansas River between the States of Arkansas and Oklahoma and to promote the orderly development thereof;
- C. To provide an agency for administering the water apportionment agreed to herein;
- D. To encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin; and
- E. To facilitate the cooperation of the water administration agencies of the States of Arkansas and Oklahoma in the total development and management of the water resources of the Arkansas River Basin.

ARTICLE II

As used in this Compact:

- A. The term "State" means either State signatory hereto and shall be construed to include any person or persons, entity or agency of either State who, by reason of official responsibility or by designation of the Governor of that State, is acting as an official representative of that State.

Article II (continued)

- B. The term "Arkansas-Oklahoma Arkansas River Compact Commission," or the term "Commission" means the agency created by this Compact for the administration thereof.
- C. The term "Arkansas River Basin" means all of the drainage basin of the Arkansas River and its tributaries from a point immediately below the confluence of the Grand-Neosho River with the Arkansas River near Muskogee, Oklahoma, to a point immediately below the confluence of Lee Creek with the Arkansas River near Van Buren, Arkansas, together with the drainage basin of Spavinaw Creek in Arkansas, but excluding that portion of the drainage basin of the Canadian River above Eufaula Dam.
- D. The term "Spavinaw Creek Sub-basin" means the drainage area of Spavinaw Creek in the State of Arkansas.
- E. The term "Illinois River Sub-basin" means the drainage area of Illinois River in the State of Arkansas.
- F. The term "Lee Creek Sub-basin" means the drainage area of Lee Creek in the State of Arkansas and the State of Oklahoma.
- G. The term "Poteau River Sub-basin" means the drainage area of Poteau River in the State of Arkansas.
- H. The term "Arkansas River Sub-basin" means all areas of the Arkansas River Basin except the four sub-basins described above.
- I. The term "water year" means a twelve-month period beginning on October 1, and ending September 30.
- J. The term "annual yield" means the computed annual gross runoff from any specified sub-basin which would have passed any certain point on a stream and would have originated within any specified area under natural conditions, without any man-made depletion or accretion during the water year.
- K. The term "pollution" means contamination or other alterations of the physical, chemical, biological or radiological properties of water or the discharge of any liquid, gaseous, or solid substances into any waters which creates, or is likely to result in a nuisance, or which renders or is likely to render the waters into which it is discharged harmful, detrimental or injurious to public health, safety, or welfare, or which is harmful, detrimental or injurious to beneficial uses of the water.

ARTICLE III

- A. The physical and other conditions peculiar to the Arkansas River Basin constitute the basis of this Compact, and neither of the States hereby, nor the Congress of the United States by its consent hereto, concedes that this Compact establishes any general principle with respect to any other interstate stream.
- B. By this Compact, neither State signatory hereto is relinquishing any interest or right it may have with respect to any waters flowing between them which do not originate in the Arkansas River Basin as defined by this Compact.

ARTICLE IV

The States of Arkansas and Oklahoma hereby agree upon the following apportionment of the waters of the Arkansas River Basin:

- A. The State of Arkansas shall have the right to develop and use the waters of the Spavinaw Creek Sub-basin subject to the limitation that the annual yield shall not be depleted by more than fifty percent (50%).
- B. The State of Arkansas shall have the right to develop and use the waters of the Illinois River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).
- C. The State of Arkansas shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Arkansas, or the equivalent thereof.
- D. The State of Oklahoma shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Oklahoma, or the equivalent thereof.
- E. The State of Arkansas shall have the right to develop and use the waters of the Poteau River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).
- F. The State of Oklahoma shall have the right to develop and use the waters of the Arkansas River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

ARTICLE V

- A. On or before December 31 of each year, following the effective date of this Compact, the Commission shall determine the stateline yields of the Arkansas River Basin for the previous water year.
- B. Any depletion of annual yield in excess of that allowed by the provisions of this Compact shall, subject to the control of the Commission, be delivered to the downstream State, and said delivery shall consist of not less than sixty percent (60%) of the current runoff of the basin.
- C. Methods for determining the annual yield of each of the sub-basins shall be those developed and approved by the Commission.

ARTICLE VI

- A. Each State may construct, own and operate for its needs water storage reservoirs in the other State; provided, however, that nothing contained in this Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State.
- B. Depletion in annual yield of any sub-basin of the Arkansas River Basin caused by the operation of any water storage reservoir either heretofore or hereafter constructed by the United States or any of its agencies, instrumentalities or wards, or by a State, political sub-division thereof, or any person or persons shall be charged against the State in which the yield therefrom is utilized.
- C. Each State shall have the free and unrestricted right to utilize the natural channel of any stream within the Arkansas River Basin for conveyance through the other State of waters released from any water storage reservoir for an intended downstream point of diversion or use without loss of ownership of such waters; provided, however, that a reduction shall be made in the amount of water which can be withdrawn at point of removal, equal to the transmission losses.

ARTICLE VII

The States of Arkansas and Oklahoma mutually agree to:

- A. The principle of individual State effort to abate man-made pollution within each State's respective borders, and the continuing support of both States in an active pollution abatement program;
- B. The cooperation of the appropriate State agencies in the States of Arkansas and Oklahoma to investigate and abate sources of alleged interstate pollution within the Arkansas River Basin;
- C. Enter into joint programs for the identification and control of sources of pollution of the waters of the Arkansas River and its tributaries which are of interstate significance;
- D. The principle that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment;
- E. Utilize the provisions of all Federal and State water pollution laws and to recognize such water quality standards as may be now or hereafter established under the Federal Water Pollution Control Act in the resolution of any pollution problems affecting the waters of the Arkansas River Basin.

ARTICLE VIII

- A. There is hereby created an interstate administrative agency to be known as the "Arkansas-Oklahoma Arkansas River Compact Commission." The Commission shall be composed of three Commissioners representing the State of Arkansas and three Commissioners representing the State of Oklahoma, selected as provided below; and, if designated by the President or an authorized Federal agency, one Commissioner representing the United States. The President, or the Federal agency authorized to make such appointments, is hereby requested to designate a Commissioner and an alternate representing the United States. The Federal Commissioner, if one be designated, shall be the Chairman and presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission.

Article VIII (continued)

- B. One Arkansas Commissioner shall be the Director of the Arkansas Soil and Water Conservation Commission, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside in the Arkansas River drainage area in the State of Arkansas and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.
- C. One Oklahoma Commissioner shall be the Director of the Oklahoma Water Resources Board, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside within the Arkansas River drainage area in the State of Oklahoma and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms, with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.
- D. A majority of the Commissioners of each State and the Commissioner or his alternate representing the United States, if they are so designated, must be present to constitute a quorum. In taking any Commission action, each signatory State shall have a single vote representing the majority opinion of the Commissioners of that State.
- E. In the case of a tie vote on any of the Commission's determinations, orders, or other actions, a majority of the Commissioners of either State may, upon written request to the Chairman, submit the question to arbitration. Arbitration shall not be compulsory, but on the event of arbitration, there shall be three arbitrators:
 - (1) One named by resolution duly adopted by the Arkansas Soil and Water Conservation Commission, or such other State agency as may be hereafter responsible for administering water law in the State of Arkansas; and
 - (2) One named by resolution duly adopted by the Oklahoma Water Resources Board, or such other State agency as may be hereafter responsible for administering water law in the State of Oklahoma; and

Article VIII (continued)

- (3) The third chosen by the two arbitrators who are selected as provided above.

If the arbitrators fail to select a third within sixty (60) days following their selection, then he shall be chosen by the Chairman of the Commission.

- F. The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact shall be borne equally by the two States and shall be paid by the Commission out of the "Arkansas-Oklahoma Arkansas River Compact Fund," initiated and maintained as provided in Article IX(B)(5) below. The States hereby mutually agree to appropriate sums sufficient to cover its share of the expenses incurred in the administration of this Compact, to be paid into said fund. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Such funds shall not be subject to the audit and accounting procedures of the States; however, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audit shall be included in and become a part of the annual report of the Commission, provided by Article IX(B)(6) below. The Commission shall not pledge the credit of either State and shall not incur any obligations prior to the availability of funds adequate to meet the same.

ARTICLE IX

- A. The Commission shall have the power to:

- (1) Employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;
- (2) Enter into contracts with appropriate State or Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records and for the preparation of reports;
- (3) Establish and maintain an office for the conduct of its affairs;

Article IX (continued)

- (4) Adopt and procure a seal for its official use;
- (5) Adopt rules and regulations governing its operations. The procedures employed for the administration of this Compact shall not be subject to any Administrative Procedures Act of either State, but shall be subject to the provisions hereof and to the rules and regulations of the Commission; provided, however, all rules and regulations of the Commission shall be filed with the Secretary of State of the signatory States;
- (6) Cooperate with Federal and State agencies and political subdivisions of the signatory States in developing principles, consistent with the provisions of this Compact and with Federal and State policy, for the storage and release of water from reservoirs, both existing and future within the Arkansas River Basin, for the purpose of assuring their operation in the best interests of the States and the United States;
- (7) Hold hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact, which orders shall be enforceable upon the request by the Commission or any other interested party in any court of competent jurisdiction within the county wherein the subject matter to which the order relates is in existence, subject to the right of review through the appellate courts of the State of situs. Any hearing held for the promulgation and issuance of orders shall be in the county and State of the subject matter of said hearing;
- (8) Make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of either State, or the United States, as may have any interest in or jurisdiction over the subject matter. Findings of fact made by the Commission shall be admissible in evidence and shall constitute prima facie evidence of such fact in any court or before any agency of competent jurisdiction. The making of findings, recommendations, or reports by the Commission shall not be

Article IX (continued)

a condition precedent to instituting or maintaining any action or proceeding of any kind by a signatory State in any court, or before any tribunal, agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions;

- (9) Secure from the head of any department or agency of the Federal or State government such information, suggestions, estimates and statistics as it may need or believe to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed;
- (10) Print or otherwise reproduce and distribute all of its proceedings and reports; and
- (11) Accept, for the purposes of this Compact, any and all private donations and gifts and Federal grants of money.

B.. The Commission shall:

- (1) Cause to be established, maintained and operated such stream, reservoir or other gaging stations as may be necessary for the proper administration of this Compact;
- (2) Collect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact;
- (3) Continue research for developing methods of determining total basin yields;
- (4) Perform all other functions required of it by the Compact and do all things necessary, proper or convenient in the performance of its duties thereunder;
- (5) Establish and maintain the "Arkansas-Oklahoma Arkansas River Compact Fund," consisting of any and all funds received by the Commission under the authority of this Compact and deposited in one or more banks qualifying for the deposit of public funds of the signatory States;

Article IX (continued)

- (6) Prepare and submit an annual report to the Governor of each signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;
- (7) Prepare and submit to the Governor of each of the States of Arkansas and Oklahoma an annual budget covering the anticipated expenses of the Commission for the following fiscal year; and
- (8) Make available to the Governor or any State agency of either State or to any authorized representative of the United States, upon request, any information within its possession.

ARTICLE X

- A. The provisions hereof shall remain in full force and effect until changed or amended by unanimous action of the States acting through their Commissioners and until such changes are ratified by the legislatures of the respective States and consented to by the Congress of the United States in the same manner as this Compact is required to be ratified to become effective.
- B. This Compact may be terminated at any time by the appropriate action of the legislature of both signatory States.
- C. In the event of amendment or termination of the Compact, all rights established under the Compact shall continue unimpaired.

ARTICLE XI

Nothing in this Compact shall be deemed:

- A. To impair or affect the powers, rights or obligations of the United States, or those claiming under its authority in, over and to the waters of the Arkansas River Basin;
- B. To interfere with or impair the right or power of either signatory State to regulate within its boundaries the appropriation, use and control of waters within that State not inconsistent with its obligations under this Compact.

ARTICLE XII

If any part or application of this Compact should be declared invalid by a court of competent jurisdiction, all other provisions and application of this Compact shall remain in full force and effect.

ARTICLE XIII

- A. This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each State and consented to by the Congress of the United States, and when the Congressional Act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party, and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto.
- B. The States of Arkansas and Oklahoma mutually agree and consent to be sued in the United States District Court under the provisions of Public Law 87-830 as enacted October 15, 1962, or as may be thereafter amended.
- C. Notice of ratification by the legislature of each State shall be given by the Governor of that State to the Governor of the other State, and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of consent by the Congress of the United States.

IN WITNESS WHEREOF, the authorized representatives have executed three counterparts hereof each of which shall be and constitute an original, one of which shall be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

DONE at the City of Tulsa, State of Oklahoma,
this 3rd day of March, A.D., 1972.

FOR ARKANSAS:

FOR OKLAHOMA:

S. Keith Jackson
S. Keith Jackson
Committee Member

Glade R. Kirkpatrick
Glade R. Kirkpatrick
Committee Member

John Luce
John Luce
Committee Member
(Alternate)

Milton Craig
Milton Craig
Committee Member
(Alternate)

Approved:

Trigg Twichell
Trigg Twichell, Representative
United States of America

Attest:

Willard B. Mills
Willard B. Mills, Secretary